



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 17, 1995

Honorable Doyle Willis
Chair
Select Committee on Military
and Veterans Affairs
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 95-050

Re: Whether a member of the Texas
Historical Commission, during the
term for which he was appointed, is
eligible to serve in the Texas
Legislature (ID# 33711)

Dear Representative Willis:

You have requested our opinion regarding the eligibility of a member of the Texas Historical Commission (the "commission") to become a member of the legislature during the pendency of his current term on the commission. Section 19 of article III of the Texas Constitution provides:

No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a *lucrative office* under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature. [Emphasis added.]

A member of the commission serves a six-year term, "with the terms of one-third of the members expiring February 1 of each odd-numbered year." Gov't Code § 442.002(c). Under the constitutional prohibition, a member of the commission may not become a legislative candidate at any time during the term "for which he [wa]s appointed" if membership on the commission constitutes a "lucrative office."

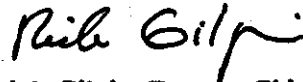
The enabling statute of the commission, codified as chapter 442 of the Government Code, declares that "[a] member of the commission serves without pay but shall be reimbursed for actual expenses incurred in attending a meeting of the commission." *Id.* § 442.002(j). In *Willis v. Potts*, 377 S.W.2d 622 (Tex. 1964), the supreme court held that a city council member who "drew the sum of \$10 per day for attending each regular meeting of the city council... and in addition received all necessary expenses," *Whitehead v. Julian*, 476 S.W.2d 844, 845 (Tex. 1972), thereby held a "lucrative office." *Willis*, 377 S.W.2d at 627. In a subsequent case, *Whitehead v. Julian*, the supreme court found that a mayor who received no compensation other than "a monthly expense account allowance of \$50 per month for secretarial work, etc." did not, as a result, hold a "lucrative office." *Whitehead*, 476 S.W.2d at 845.

Section 442.002(j) specifically provides that a member of the commission "serves without pay," and that he may be reimbursed *only* "for actual expenses incurred in attending [commission meetings]." Consequently, under the test set forth by the supreme court in *Willis*, 377 S.W.2d at 626-27, and *Whitehead*, 476 S.W.2d at 845, a commission member does not hold a "lucrative office." Thus, article III, section 19, does not bar such an individual from serving in the legislature during the term for which he was appointed to the commission.

S U M M A R Y

A member of the Texas Historical Commission is not prohibited by article III, section 19, of the Texas Constitution from becoming a member of the Texas Legislature during the pendency of the term for which he was appointed to the commission.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Rick Gilpin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rick Gilpin, Deputy Chief
Opinion Committee